

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**JOHN CHARLES KENNEY,**

# Plaintiff

**V.**

**JEFFREY E. THOMAS, Warden, *et al.*,:**

## Defendants

**CIVIL NO. 1:13-CV-2887**

**(Judge Rambo)**

**(Magistrate Judge Blewitt)**

# MEMORANDUM

Before the court is a report and recommendation (Doc. 10) by Magistrate Judge Blewitt in which he recommends that Plaintiff John Charles Kenney's complaint filed pursuant to 28 U.S.C. § 1331 be dismissed without prejudice to file an amended complaint. Kenney has filed objections to the report and recommendation (Doc. 17) , a motion to depose defendants (Doc. 11), a motion to proceed *in forma pauperis* (Doc. 2), a motion for the court to order defendants to cease and desist retaliating against plaintiff (Doc. 15), and a motion for appointment of counsel (Doc. 16).

The complaint alleges a violation of Kenney's Eighth Amendment claim of denial of proper medical care. Kenney sues Jeffrey E. Thomas, Warden of the United States Penitentiary at Lewisburg, Pennsylvania; Sarah Dees, a nurse; and Andrew M. Edinger, M.D.

The magistrate judge recommended dismissal of the complaint against Warden Thomas because the complaint alleged no personal involvement by the warden and that the claim against the warden is based on respondeat superior. The

magistrate judge further recommended that the complaint be dismissed as to Dees and Edinger because the complaint failed to show that these defendants were deliberately indifferent to Kenney's serious medical needs. There is also an issue as to whether Kenney has exhausted his administrative remedies.

In his objections to the report and recommendation, Kenney alleges that the magistrate judge failed to serve a copy of his complaint on the defendants and that the defendants have not responded to his complaint. The complaint in this case need not be initially served upon defendants. Pursuant to 28 U.S.C. § 1915(e)(2), the court is obligated to engage in a screening process when a prisoner wishes to proceed *in forma pauperis*. This is the procedure which the magistrate judge appropriately followed.

Kenney also claims that the magistrate judge failed to address several motions which he filed. Except for the motion for leave to proceed *in forma pauperis*, which the magistrate judge did address, all other motions are premature and will not be addressed on the merits until a proper complaint is filed and served.

The court will adopt the report and recommendation of the magistrate judge. An appropriate order will be issued.

s/Sylvia H. Rambo  
United States District Judge

Dated: March 14, 2014.